UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

SHEPARD EXPOSITION SERVICES, INC.[1]

Employer

and Case 12-RC-9005

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL 1765[2]

Petitioner

and

INTERNATIONAL ALLIANCE OF THEATRICAL AND
STAGE EMPLOYEES, LOCAL 835, AFL-CIO[3]

Intervenor

and

INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, LOCAL 1175, AFL-CIO

Intervenor

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL No. 385, AFL-CIO

Intervenor

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Shepard Exposition Services, Inc. is a general services contractor engaged in the business of providing decorating services as well as constructing and dismantling

[1] The Employer's name appears as amended at the hearing.
[2] The Petitioner's name appears as amended at the hearing.
[3] IATSE Local 835 withdrew from this proceeding during the first day of the hearing. However, on the second day of the hearing, IATSE Local 835 intervened again for the limited purpose of protecting its interests in an existing unit of employees of the Employer and has expressed no interest in representing other employees employed by the Employer.

exhibits and displays for customers in the convention and trade show industry. It performs these services for customers throughout the United States and Canada, including various cities in the State of Florida. Petitioner, United Brotherhood of Carpenters and Joiners of America, Local 1765, filed a petition, which was later amended, with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of employees employed by the Employer in Orange, Osceola, Seminole, Brevard, and Volusia Counties, in the State of Florida, performing show site freight services work, and all employees employed by the Employer at the Employer's Orlando warehouse, in the carpentry and metal shops. A hearing officer of the Board held a hearing and the Employer filed a brief with me.[4]

The parties agree that employees performing show site freight services work including, loading, unloading, handling and placing freight equipment, storage and replacing the empties, exhibit freight, association freight, small packages and checker, material handlers, forklift operators, rigging forklift operators, exhibit and machine riggers, and truck drivers are appropriately included in the unit. The parties also agree that all professional employees, carpet cleaners, graphics production employees, salespersons, customer service representatives, office clerical employees, all other employees covered under an existing collective bargaining agreement, guards and supervisors as defined in the Act should be excluded from the unit.

However, as evidenced at the hearing and in the Employer's brief, the following issues are raised by the parties: (1) whether the petition is barred by the Employer's voluntary recognition of Painters Local 1175 as the exclusive-bargaining representative of certain employees; (2) whether any, or all, metal and carpentry shop employees should be included in the unit; and (3) what formula should be used to determine which employees are eligible to vote in an election to determine whether they wish to be

[4] At the hearing, the Petitioner and the Intervenors waived the filing of briefs.

represented for purposes of collective bargaining by the Petitioner, Painters Local 1175, or IBT Local 385, or to remain unrepresented.

The Petitioner contends that the petition is not barred by the Employer's voluntary recognition of Painters Local 1175[5] and that the employees employed in the Employer's carpentry and metal shops should be included in the unit. Petitioner contends that the formula set forth in Davison-Paxon, 185 NLRB 21 (1970) should be used to determine eligibility.

The Employer contends that the petition is barred by its voluntary recognition of Painters Local 1175 as the exclusive bargaining representative of certain employees in the petitioned-for unit, but that if there is an election the first of the two alternative formulas set forth in Artcraft Displays, Inc., 262 NLRB 1233 (1982), supplemented by, 263 NLRB 804 (1982) should be used to determine eligibility. The Employer also appears to contend that at least some of its employees employed in the metal and carpentry shop should be excluded from the unit because they are represented by IATSE Local 835 and are covered by a collective-bargaining agreement between the Employer and IATSE Local 835.

IATSE Local 835 apparently contends that carpentry and metal shop employees should not be included in the unit because employees in these shops are covered by its collective-bargaining agreement with the Employer. IATSE Local 835 did not take a position regarding the formula to be used to determine eligibility, as it does not wish to appear on the ballot in any election conducted in these proceedings.

Painters Local 1175 contends that the petition is barred by the Employer's voluntary recognition of it as the employees' exclusive-collective bargaining

[5] Painters Local 1175 sought voluntary recognition in a unit consisting of all employees employed by the Employer performing show site freight service work, including unloading, loading, handling of freight equipment, storing and replacing empties, exhibit freight, association freight, small packages, material handlers, checkers, forklift operators, forklift rigging of exhibit and machines, and all other freight related duties.

representative. Painters Local 1175 further asserts, that if there is an election, the first Artcraft formula should be used to determine eligibility.

IBT Local 385 contends that employees employed in the carpentry shop and metal shop should not be included in the unit because they are covered by an existing collective-bargaining agreement between IATSE Local 835 and the Employer. IBT Local 385 also believes that the first Artcraft formula should be used to determine eligibility.

I have considered the evidence and the arguments presented by the parties on each of the above issues. As discussed below, I have concluded the following: (1) the petition is not barred by the Employer's voluntary recognition of Painters Local 1175 as the collective-bargaining representative of certain employees; (2) employees employed by the Employer in its metal and carpentry shops are excluded from the unit found appropriate; and (3) all employees in the directed unit who regularly averaged four (4) hours per week or more during the fourth calendar quarter of 2003 are eligible to vote in the election.

I. OVERVIEW OF OPERATIONS.

The Employer is a Georgia corporation, with its principal place of business located in Atlanta, Georgia, and with one of its five branch offices located in Orlando, Florida. The Employer's Orlando branch contracts to provide exposition services to exhibitors for approximately 90 shows and events annually at convention centers throughout the United States. Approximately half of the shows and events for which the Employer's Orlando branch provides exposition services take place in the Orlando area, and the remaining shows occur in various other cities throughout the United States. While the Employer is busy during the months of January, February, October, and November of each year, the Employer is busiest during the fourth quarter of each year.

The Employer's Orlando branch includes the vice-president/general manager (VP/GM), the operations manager (OM), sales manager (SM), warehouse managers

(WM), supervisors, and customer service representatives (CSR). When the Orlando branch provides services for shows in other cities in the United States, its managers, supervisors, and customer service representatives travel to the respective city to hire local employees and oversee such employees. Similarly, if another branch provides services for a client in Orlando, the staff from that city will travel to Orlando and will oversee employees hired locally.

The Employer primarily hires its employees on an as-needed basis as it wins bids to provide exposition services to clients. The Employer finds its employees through lists it maintains, from referral services, or temporary employment agencies.[6] Certain categories of employees are referred to the Employer by IATSE Local 835, pursuant to a collective bargaining agreement.[7] As discussed in more detail below, the Employer has a core group of 9 to 11 employees in Orlando who apparently regularly work approximately 40 hours per week.[8] However, the majority of its employees work less regularly and are hired to perform work on specific shows.

The largest show in Orlando for which the Employer performs freight services is the International Association of Amusement Parks and Attractions (IAAPA). The show is produced by the Employer's Atlanta office, but most of the employees who work the show are hired from the Orlando area. The IAAPA show was held in Orlando in 2002

[6] Currently, it appears that employees obtained through temporary agencies are employed to provide cleaning services and no party has contended that such employees should be included in the unit.

[7] The collective-bargaining agreement between the Employer and IATSE Local 835 includes:

> [E]mployees engaged in the handling and placing of pipe, bases, drape, tables, table draping, erecting or dismantling display booths and/or exhibits, modular systems, pegboards, tack boards, drape hung or rigged, carpeting, furniture, platforms, I.D. signs within booth, floor marking, waste baskets, aisle banners, signage, table risers and "Association work" . . ..

The agreement explicitly excludes the handling of freight and empties from its coverage.

[8] The Employer nonetheless considers the employees who work 40 hours a week on a regular basis to be part-time employees because they do not receive benefits. However, I conclude that these employees are full-time employees for the purposes of this decision.

and 2003, and the Employer has a contract to produce the IAAPA show in Orlando in November 2004. The show is expected to be held in Atlanta in 2005 and 2006.

II. VOLUNTARY RECOGNITION OF PAINTERS LOCAL 1175

The petition is not barred by the Employer's voluntary recognition of Painters Local 1175 as the exclusive-bargaining agent of certain employees. I reach this conclusion for the same reasons that I denied the Employer's pre-hearing Motion to Dismiss Petition.[9]

In its brief, the Employer argues that the petition in Case 12-RC-9001 should be considered to have been withdrawn on the date that the Petitioner notified the Region of its intent to withdraw. The Employer goes on to argue that the facts of the instant case differ from the facts in Smith's Food & Drug Centers, 320 NLRB 844 (1996) because the Employer and Painters Local 1175 had been engaged in discussions prior to any other union beginning an organizing campaign. The Employer asserts that the facts of this particular case require that the instant petition be barred by its voluntary recognition of Painters Local 1175, and that failing to do so will discourage employers from voluntarily recognizing unions.

In order to establish a recognition bar to a petition, such recognition must be made in good faith and on the basis of a previously demonstrated majority. Sound Contractors Assn., 162 NLRB 364 (1967). Furthermore, the Board has held that where a petitioner demonstrates a 30% or more showing of interest that predates recognition, an election should be held so that employees have an opportunity to express their wishes in a definitive manner. Smith's Food & Drug Centers, 320 NLRB 844 (1996).

There is no record evidence to support the Employer's contention that the Employer and Painters Local 1175 had discussed voluntary recognition prior to any

[9] The Employer's motion to dismiss the petition is in the record as Employer Exhibit 1 and the Order Denying Motion To Dismiss Petition is in the record as Board Exhibit 3.

other union starting an organizing campaign. The evidence does show that Painters Local 1175 did not request recognition until December 21, 2003. Then, on January 2, 2004, the Employer's vice-president signed a document voluntarily recognizing Painters Local 1175 as the representative of certain employees.[10] However, the document was not signed by Painters Local 1175.

The date that a petition is no longer pending is the date that the request for withdrawal is approved. Thus, at all material times, Petitioner had a petition pending before the Board.[11] Therefore, when the Employer granted recognition to Painters Local 1175 on January 2, 2004, while Petitioner still had a petition pending before the Board, it did not do so "in good faith". In fact, the circumstances suggest that the Employer granted recognition to Painters Local 1175 to avoid the possibility of having an election through which the employees might choose the Petitioner as their exclusive collective-bargaining representative.

Even if the Employer granted recognition in good faith and had been engaged in discussions with Painters Local 1175 for several months prior to the advent of any other organizing campaign, that recognition would not bar the instant petition. I have administratively determined that the Petitioner has supported its petition with at least a 30% showing of interest that predates the Employer's attempted recognition of Painters Local 1175. The Board uses the date of recognition, not the date that discussions began, to determine whether or not a petition is barred by recognition. Smith's Food &

[10] By its terms, the agreement covers:

> [A]ll employees employed by the Employer performing show site freight service work, including unloading, loading, handling of freight equipment, storing and replacing empties, exhibit freight, association freight, small packages, material handlers, checkers, forklift operators, forklift rigging of exhibit and machines, and all other freight related duties.

[11] On December 23, 2003, the Petitioner filed the petition in Case 12-RC-9001 seeking to an election in a unit almost identical to the unit sought in the instant matter, Case 12-RC-9005. Petitioner orally requested withdrawal of 12-RC-9001 on January 2, 2004. The parties were notified of the request the same day. The withdrawal was not approved by the undersigned until January 6, 2004. Petitioner filed the petition in the present case, Case 12-RC-9005, on January 5, 2004.

Drug Centers, supra. Thus, even if the Employer and Painters Local 1175 had been discussing recognition for several months, such discussions cannot be a bar to the instant petition.[12]

Therefore, I conclude that the Employer's voluntary recognition of Painters Local 1175 does not bar the processing of this petition.

III. CARPENTRY AND METAL SHOP EMPLOYEES AND THE IATSE CONTRACT.

The work in the carpentry and metal shops ranges from simple tasks, requiring little skill, to complex tasks, requiring skilled craftsmen. Employees may be assigned to anything from making simple cuts to building displays from scratch. Employees working in the metal and carpentry must know how to use specialized tools. In the metal shop, booths or projects are assembled using a product called Octanorm. In the carpentry shop employees build and assemble exhibits, or make tables.

IATSE has two "priority" employees working in the Employer's Orlando warehouse, which includes working in the carpentry and metal shops.[13] The priority employees assemble displays and work on modular systems. While the full extent of the priority employees' duties in the metal and carpentry shops is not clear, it does not appear that individuals referred to the Employer by IATSE Local 835 engage in the more complicated or skilled work in the carpentry shop[14], but are qualified to perform the majority of the work that takes place in the metal shop.

Although the Employer's core group of employees appears to spend most of their time performing other work, the Employer has used some of its core group of employees

[12] Furthermore, it is noted that Painters Local 1175 has failed to submit sufficient evidence for the undersigned to determine that it actually attained majority status at the time of recognition.

[13] The Employer's contract with IATSE permits it to designate employees as "priority" employees. This simply means that the Employer sets the employees' schedules and does not need to ask IATSE Local 835 to refer those employees to work. Instead, the Employer merely needs to keep IATSE Local 835 informed of the employees' schedules.

[14] As discussed further below, highly skilled "finish" carpenters work in the carpentry shop on an as-needed basis. It is not clear from the record whether or not these individuals are employees or independent contractors.

to work in the metal and carpentry shops on occasion. For example, three of the core group of employees have worked in the carpentry shop making minor cuts and the like, with supervision. One employee from the core group of employees is qualified to work in the carpentry and metal shops, as well as to drive trucks and forklifts, and has apparently performed more complicated carpentry work, but not finish work. Some of the remaining core group of employees have pulled and cut metal, and assembled display units.

When the Employer needs additional employees to work in its carpentry and metal shops, it requests referrals from IATSE Local 835. In addition to the two priority employees working in the Employer's warehouse, IATSE Local 835 asserts that it has referred 26 other employees to the Employer's warehouse during 2002 and 2003.

The individuals referred to the Employer's warehouse and carpentry shops by IATSE Local 835 perform work that is related to show site preparation. For example, employees referred by IATSE Local 835 may pre-build booths and displays in the warehouse rather than building everything on the show site floor. These employees may also make tables to be used at the show site or prepare materials to be delivered to the show site.

The employees referred to the Employer's metal and carpentry shops by IATSE Local 835 are paid according to the collective bargaining agreement and receive benefits through IATSE Local 835. When IATSE Local 835 refers employees to work in the metal and carpentry shops, it also refers one or more stewards. According to the representative of IATSE Local 835, who testified at the hearing, to his knowledge all employees who work in the metal and carpentry shops are paid and given benefits as specified in the contract with IATSE Local 835.

The collective-bargaining agreement between IATSE Local 835 and the Employer explicitly excludes transportation and the handling of freight and empties.

There is no evidence in the record to show that employees referred by IATSE Local 835 have performed work beyond the scope of the collective-bargaining agreement or that they have had more than peripheral involvement in the handling of freight.

If the Employer needs extra help in the metal shop, it seeks referrals from IATSE Local 835 exclusively. The Employer has sought additional employees to work in the carpentry shop from sources other than IATSE Local 835. Thus, at times, the Employer has brought in cabinetmakers or other individuals qualified to perform finish work. The Employer is familiar with some cabinetmakers that it calls to work and has found others through newspaper advertisements. These employees build tables, and apparently also work on the construction of booths and other expensive projects. It is unclear how often such employees are called to work for the Employer or the average length of time such employees work for the Employer.[15]

It is clear that the employees working in the metal and carpentry shops are covered by the collective bargaining agreement between the Employer and IATSE Local 835. While there may be some employees who work in these shops who were not referred by IATSE Local 835, they appear to be the part of the Employer's core group of employees and work minimal hours in those shops, or to be highly skilled craftsmen, who work only on special projects and who may be independent contractors. Because employees working in the metal and carpentry shops are part of an existing bargaining unit and are covered by an existing collective bargaining agreement, they cannot be included in the appropriate unit.

Moreover, the record fails to establish that the employees who work in the metal and carpentry shops share a community of interest with other employees in the petitioned-for unit. There is no record evidence that any employees who work in the

[15] As noted previously, it is unclear whether or not these individuals are independent contractors.

metal and carpentry shops, other than the core group of employees who only work in the metal and carpentry shops on a sporadic and minimal basis, have ever handled freight.

Under these circumstances, I conclude that employees employed in the carpentry and metal shops must be excluded from the unit.

IV. APPROPRIATE METHOD FOR DETERMINING VOTER ELIGIBILITY

The parties disagree regarding the appropriate formula to be used to determine which employees are eligible to vote in the representation election to be directed in this case. The Employer, IBT Local 385, and Painters Local 1175 maintain that one of the two alternative Artcraft eligibility formulas should be applied in this case. Petitioner contends that the Davison-Paxon formula should be used to determine voter eligibility. IATSE Local 835 took no position regarding the appropriate formula to be used.

In its brief, the Employer argues that, relying on the Artcraft formula, only employees who worked for 15 days during the fourth quarter of 2003 should be eligible to vote in an election. The Employer asserts the Artcraft formula enfranchises employees who have a reasonable expectation of reemployment, while the Davison-Paxon formula will result in employees being eligible to vote who do not have a reasonable expectancy of reemployment. The Employer also argues that the Artcraft formula must be used because the employer in Artcraft was in the same industry; the formula is established Board precedent; and it was applied previously in Case 12-RC-8904.

The goal of an eligibility formula is to ensure that employees who have a reasonable expectancy of reemployment are given the opportunity to vote. See Trump Taj Mahal Casino, 306 NLRB 294 (1992). Absent special circumstances, the Davison-Paxon formula is used most frequently to determine eligibility. See Id. Here, none of the parties advocating the use of the Artcraft formula introduced evidence showing that circumstances exist that would require the use of a formula other than the Davison-

Paxon formula or that the Artcraft formula is a superior one based on the particular facts of this case.

The first of the two alternative Artcraft formulas, which the Employer and two Intervenors assert should be used[16], provides that employees who worked 15 days during the busiest calendar quarter of the year are eligible to vote. There is an alternative formula set forth in Artcraft, which applies to employees who are referred to work by a union, and it, thus, is not relevant to this case in which we are dealing with previously unrepresented employees.[17] Under the Davison-Paxon formula, the formula that the Petitioner believes is appropriate, employees who regularly averaged four or more hours of work per week during the calendar quarter immediately preceding the payroll eligibility date are eligible to vote.

The Employer asserts, and I agree, that the fourth quarter of 2003 should be used to analyze the issue of voter eligibility, since the fourth quarter is the Employer's busiest quarter each year. The Employer's payroll records indicate that a total of approximately 105 employees worked in the Employer's freight and trucking departments during 2003. Approximately 30 of those employees worked a sufficient number of hours during the fourth quarter of 2003 to be eligible to vote using the Davison-Paxon formula. Despite the Employer's position that the Artcraft formula should be used to determine eligibility, the Employer did not introduce any documents that can be used to determine the approximate number of employees eligible under Artcraft or the appropriateness of applying the formula here.[18]

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[16] As discussed above, IATSE Local 835 took no position regarding the appropriate eligibility formula.

[17] The second part of the Artcraft formula provides that part-time employees with over 1,000 hours seniority currently working, or available for work and who appear on a union's seniority list are eligible to vote. Artcraft Displays, Inc., 262 NLRB 1233 (1982), supplemented by, 263 NLRB 804 (1982).

[18] The hearing in this case was reopened and records subpoenaed from the Employer to determine the proper eligibility formula. Despite its contention that the Artcraft formula is appropriate, the Employer failed to provide records showing numbers of days worked by

While Painters Local 1175 and the Employer contend that the first of the Artcraft formulas must be used because it is the industry standard, no evidence was introduced to support that contention, and it appears that there are no reported Board cases where the exact Artcraft formulas were applied, other than the Artcraft case itself.[19] In Case 12-RC-8904, which involved the Employer and IATSE Local 835, the Board, in an unpublished decision, affirmed the portion of the Decision and Direction of Election finding that all employees who had worked for the Employer for a minimum of 15 days within the fourth calendar quarter of 2002 were eligible to vote, but reversed the finding that all employees who had worked a minimum of 52 hours in the fourth quarter of 2002 plus worked at least once in the fourth quarter of 2001 were also eligible to vote. However, in reversing the Acting Regional Director, the Board did not state that Artcraft was the only formula that could be used, or that it was even the best formula to use, rather the Board affirmed that portion of the decision based on its conclusions that neither party objected to the application of the Artcraft formula and that "no party contends that there are employees with a reasonable expectation of future employment that would not be eligible under the Artcraft Displays formula." Such is not the case here.

There is no reason to believe that the Davison-Paxon formula would enfranchise employees who do not have a reasonable expectancy of reemployment. Indeed, given the nature of the Employer's business, the frequency of its shows, and the fact that the IAAPA show will be in Orlando in 2004 and may return sometime after 2006, the

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employees. Instead, the records it provided show total hours worked weekly by employees. Of approximately 91 employees who performed unit work in the fourth quarter of 2003, only about 8 out of 91 employees are shown in the records as having performed 120 or more hours of unit work during the fourth quarter of 2003; about 22 worked at least 60 hours; and about 30 of the 91 worked at least 52 hours.

[19] There are other cases, such as DIC Entertainment, 328 NLRB 660 (1999), where somewhat similar eligibility formulas were used. For example, in DIC Entertainment, employees who worked on two productions for a minimum of 5 days, or alternatively worked 15 days, during the preceding 12 months were eligible to vote.

evidence shows that the employees have a substantial expectancy of reemployment. In fact, of the approximately 30 employees who would be eligible to vote using the Davison-Paxon formula as applied to the fourth quarter of 2003, it appears that more than half had also worked more than 52 hours during the fourth quarter of 2002.

The Employer asserted at the hearing that there would be about 8 to 12 employees eligible to vote if the Artcraft formula were used to determine eligibility. The Employer concedes that its core group of employees, who apparently regularly work about 40 hours each week, would constitute the majority of employees eligible to vote under the Artcraft formula. Thus, using the first of the alternative Artcraft formulas would apparently result in almost no part-time, or on-call, employees being eligible to vote in the election. Clearly, the Employer uses a substantial number of part-time and on-call employees throughout the year. Thus, using the Artcraft formula will disenfranchise numerous employees who have a reasonable expectation of reemployment with the Employer.[20] On the other hand, the Davison-Paxon formula ensures that employees who do not have a reasonable expectation of reemployment by the Employer are excluded from voting, while safeguarding the voting rights of those employees who are likely to be reemployed.

Accordingly, in an effort to ensure that all employees who have a reasonable expectancy of reemployment are given the opportunity to vote, I conclude that all employees in the directed unit who regularly worked an average of four or more hours per week in the fourth quarter of 2003, the Employer's busiest quarter, are eligible to vote.

[20] An employee called by the Petitioner at the hearing testified that he worked on the 2003 IAAPA show, and had been told by the Employer that he would be called for the 2004 IAAPA show. He testified that he intended to work again in 2004 for the Employer on the IAAPA show. Clearly, this and other evidence shows that the Employer recalls previously employed employees for this and other work.

V. CONCLUSIONS AND FINDINGS.

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

C. The Petitioner claims to represent certain employees of the Employer.

D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

F. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees performing show site freight services work, including loading, unloading, handling and placing freight equipment, storage and replacing the empties, exhibit freight, association freight, small packages and checker, material handlers, forklift operators, rigging forklift operators, exhibit and machine riggers, and truck drivers employed by the Employer in Orange, Oseola, Seminole, Volusia, and Brevard Counties, within the State of Florida; **excluding** all professional employees, carpet cleaners, graphics production employees, salespersons, customer service representatives, office clerical employees, carpentry and metal shop employees, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for the purposes of collective bargaining by United Brotherhood of Carpenters and Joiners of America, Local 1765; or International Union of Painters and Allied Trades, Local 1175, AFL-CIO; or International Brotherhood of Teamsters, Local No. 385, AFL-CIO; or if they wish to remain unrepresented. The date,

time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the decision.

A. Voting Eligibility

Eligible to vote in the election are those full-time employees in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are those employees who worked for the Employer for at least an average of four hours per week during the fourth calendar quarter of 2003.[21] Also eligible are employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause and who have not been reinstated; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters.

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should

[21] As discussed above, based on the Employer's payroll records, which are in evidence as Board Exhibit 10, it appears that there are approximately 30 employees eligible to vote.

have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 E. Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824, on or before **February 26, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (813) 228-2874. Since the list will be made available to all parties to the election, please furnish a total of four copies. If you have any questions, please contact the Regional Office.

B. Notice Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the

election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. EST on March 4, 2004. This request may **not** be filed by facsimile.

Dated at Tampa, Florida, this 19th day of February 2004.

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, Florida 33602

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